UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25

PARAGON SYSTEMS, INC. and PRAETORIAN SHIELD, INC.

Joint Employers

and

FEDERAL CONTRACT GUARDS OF AMERICA (FCGOA)

Petitioner

Case 25-RC-265488

and

COMMITTEE FOR FAIR AND EQUAL REPRESENTATION

Intervenor

DECISION AND DIRECTION OF ELECTION

Federal Contract Guards of America (FCGOA) ("Petitioner") seeks to represent a unit of security guards employed by Paragon Systems, Inc. ("Paragon")[1] and Praetorian Shield, Inc. ("Praetorian") (together "Joint Employers") working out of federal buildings and offices in Central and Southern Illinois,[2] part of a larger existing bargaining unit. Committee for Fair and Equal Representation ("Intervenor") currently represents the security guards working out of federal facilities in the state of Illinois. The Intervenor contends that this historical unit should not be disturbed while the Joint Employers took no position regarding the appropriateness of the petitioned-for unit or the historical unit. A hearing officer of the National Labor Relations Board ("Board") held a hearing in this matter, but the Intervenor failed to timely submit its Statement of Position raising its contention and was, thus, precluded from presenting evidence at the hearing. The Joint Employers also failed to timely submit their Statements of Position and were also precluded from presenting evidence at the hearing.

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[1] Also referred to in the record as Parasys.

[2] As amended at the hearing, Petitioner seeks to represent the following unit:

> Included: All full-time and regular part-time protective security officers performing guard duties as defined by 9(b)(3) of the Act, working for Paragon Systems, Inc. and Praetorian Shield, Inc. (as joint employers) in its contract with the Federal Protective Service, in federal buildings and facilities across Illinois in the cities of Bloomington, Kankakee, Rock Island, Peoria, Galesburg, Litchfield, Pekin, Peru, Decatur, Quincy, Springfield, Belleville, Mount Vernon, Carbondale, Frankfort, East St. Louis, Effingham, Harrisburg, Alton, Champaign, Fairview Heights, Benton, and Danville.
>
> Excluded: All other employees, including administrative, clerical, and non-guards, as defined by the Act.

There are between approximately 204 to 270 employees in the historical unit while there are approximately 62 employees in the petitioned-for unit.

As explained below, based on the record and relevant Board law, I find that Petitioner failed to meet its burden to show that compelling circumstances exist to disturb the historical unit or that the historical unit is otherwise repugnant to the National Labor Relations Act ("Act"). As Petitioner stated its intent to proceed to an election if I found the historical unit to be appropriate, I find a question concerning representation exists under Section 9(c) of the Act. Accordingly, I am directing an election in this matter in the historical unit.

I. PRECLUSION AND THE STATE OF THE RECORD[3]

Section 102.66(d) of the Board's Rules and Regulations precludes a party from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue where the party fails to raise the issue in a timely Statement of Position. Under Section 102.63(b)(1) of the Rules and Regulations, a statement of position is timely only if received by the Regional Director and the parties named in the petition by the date and time specified in the Notice of Hearing, "which shall be at noon 8 business days following the issuance and service of the Notice of Hearing." Section 102.63(b)(1) permits a Regional Director to extend the time for filing and serving the Statement of Position, but only on request of a party showing good cause. The Board has found that Regional Directors must adhere literally to these rules. See *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13 (2017) (denying request for review and agreeing with Regional Director's decision that employer was precluded from litigating appropriateness of petitioned-for unit); *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016) (finding Regional Director erred in excusing untimely filing of statement of position).

In this case, the petition was filed on September 1, 2020,[4] and the following day, September 2, I issued a Notice of Hearing setting a hearing for September 23 and specifying that any Statement of Position must be received by me and the parties by noon on September 15. On September 2, I also issued a letter to the Intervenor specifying any Statement of Position must be received by me and the parties by noon on September 15.[5] On September 15, the Joint Employers filed Statements of Position with the Region after 11:00 p.m. The Intervenor did not

[3] Counsel for the Joint Employers voluntarily left the hearing before the presentation of witnesses. The Intervenor and Petitioner stipulated to several facts following the Joint Employers' departure; however, absent an agreement by the Joint Employers, those two-party stipulations have not been relied on in my decision.

[4] All dates are in 2020 unless otherwise noted.

[5] "Regional Directors retain discretion as to whether an intervenor will be required to file and serve a Statement of Position in any type of representation case." Memorandum GC 20-07, Guidance Memorandum on Representation Case Procedure Changes, Sec. III.C. (June 1, 2020). See also Memorandum GC 15-06, Guidance Memorandum on Representation Case Procedure Changes Effective April 14, 2015, Sec. II.E. (April 6, 2015), citing 79 Fed. Reg. 74308, 74383 (2014) ("The Board did not require that an intervenor file a Statement of Position, but indicated that the regional director has discretion to impose this requirement on an intervenor").

file and serve its Statement of Position until September 17. I did not receive any request for an extension of the time for filing or serving the Statements of Position prior to when they were due.

In view of Sections 102.66(d) and 102.63(b)(1) and the Intervenor's and Joint Employers' failure to timely file and serve their Statements of Position, I instructed the hearing officer to refuse to take evidence or allow argument from the Intervenor and Joint Employers as to the appropriateness of the unit or any other issue. The Employer filed a motion for leave to file its Statement of Position, make it part of the record, or otherwise present evidence and argument regarding the appropriateness of the petitioned-for unit, and I denied that motion. I now affirm the hearing officer's refusal to take evidence or allow argument from the Intervenor and Joint Employers.

Section 102.66(b) provides that the rules on timely submission of statements of position shall not limit a Regional Director's receipt of evidence concerning any issue as to which the Regional Director determines that record evidence is necessary. I, therefore, directed the hearing officer to take testimony and evidence from Petitioner regarding any compelling circumstances that would warrant disturbing the historical unit.

II. JOINT EMPLOYERS' OPERATIONS AND THE HISTORICAL UNIT

As stipulated by the parties, Paragon is signatory to a contract with the Department of Homeland Security/Federal Protective Service to provide security guards to the federal buildings in the state of Illinois. Paragon subcontracted a portion of this work to Praetorian, over whose employees it exercises direct and immediate control by actually instructing them how to perform their work.[6] The guards jointly employed by Paragon and Praetorian have similar skills, duties, and terms and conditions of employment with those employed solely by Paragon.[7] The security guards employed by Paragon have been represented by the Intervenor for over a decade. Such representation has been embodied in collective bargaining agreements between Paragon and the Intervenor, with the most recent being effective from November 16, 2017 to December 31, 2020.

An employee who has worked as a federally contracted security guard in Southern Illinois for 23 years testified that the current statewide bargaining unit (the "historical unit") has existed since about 2007 or 2008. The parties agree that the security guards, regardless of location, generally perform the same duties. Security guards are directly supervised by Lieutenants, who are overseen by Captains. The record does not disclose how many Lieutenants or Captains currently work for the Joint Employers in Illinois or the area they each cover. However, an 11-year employee testified if there was an incident on the job, he would call the Megacenter in Battle Creek, Michigan, and then call a Lieutenant or Captain in Northern Illinois if his Lieutenants were not available, although this has never happened. The record does not contain any evidence regarding labor relations for Paragon, Praetorian, or the Joint Employers.

[6] The parties stipulated, and I find, that Paragon and Praetorian are joint employers within the meaning of Section 103.40 of the Board's Rules and Regulations.

[7] The parties stipulated, and I find, that the jointly employed employees are appropriately included in any appropriate unit found under this petition.

All three employee witnesses testified to a geographic division between Northern Illinois and Greater Illinois.[8] The geographic division appears codified in Article XI, Section 4, of the most recent collective-bargaining agreement covering the historical unit, with effective dates from November 16, 2017 until December 31, 2020, which states: "For purposes of vacation scheduling, the workforce is divided between the North area (north of I-80) and the Greater Illinois area (south of I-80)."[9] However, the parties' previous contract did not contain this language. All three employee witnesses testified that separate seniority lists for Greater Illinois and Northern Illinois appear on the Intervenor's website and that these lists are used for vacations. Additionally, separate vacation schedules appear on the Intervenor's website divided between the Northern Illinois and Greater Illinois area. An 11-year employee and former Intervenor steward indicated they "have always been on the [Intervenor's] website;" however, the record does not disclose how long the separate lists have been kept. Further, no witness testified that the seniority list was used for purposes other than vacation scheduling.

The 23-year employee testified that security guards from the North area may have temporary assignments in the Greater Illinois area with Federal Emergency Management Agency ("FEMA") when it responds to disasters. He knew of about three times during his career when this happened, although he did not know how long the temporary assignments lasted. He also did not know of any security guards from the Greater Illinois who had worked in the Northern Illinois. None of the witnesses testified to any other temporary or permanent interchanges.

The 11-year employee and former Intervenor steward testified he represented employees in Greater Illinois from about 2010 until 2017, assisting them with grievances and telephonically attending disciplinary meetings, which were generally with the Lieutenant although the discipline was determined by someone at a higher level. He wrote the grievances and sent them to the Intervenor's president, who was located in Chicago; however, he never wrote a grievance for anyone in Northern Illinois. If he was not available, he would have directed employees to the Intervenor's executive board, who are all located in the Chicagoland area. The record does not disclose whether there is currently a steward in Greater Illinois or how many stewards are in Northern Illinois.

III. BOARD LAW

"It is well settled that the existence of significant bargaining history weighs heavily in favor of a finding that a historical unit is appropriate, and that the party challenging the historical unit bears the burden of showing that the unit is no longer appropriate." *Canal Carting, Inc.*, 339 NLRB 969, 970 (2003) (citing *Children's Hospital of San Francisco*, 312 NLRB 920, 929 (1993), enfd. sub nom. 87 F.3d 304 (9th Cir. 1996); *Fisher Broadcasting, Inc.*, 324 NLRB 256,

[8] Greater Illinois is also referred to in the record as "Southern Illinois," "Central and Southern Illinois," and "Downstate." Northern Illinois is also referred to in the record as the "North area," "Upstate," "Greater Chicago Area," and "Chicago Loop," although the North area is not limited to Chicago.

[9] The record shows there are approximately 90 federal facilities in Illinois serviced by Paragon, with approximately 52 locations in Northern Illinois and 38 locations in Greater Illinois, including 18 predominately shared with Praetorian. See Board Exh. 2, Attachment D.

262-263 (1997); *Buffalo Broadcasting Co.*, 242 NLRB 1105, 1105 fn. 2 (1979); *Columbia Broadcasting System, Inc.*, 214 NLRB 637, 643 (1974); *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549, 1550 (1965)); *Trident Seafoods, Inc.*, 318 NLRB 738 (1995), enfd. 101 F.3d 111 (D.C. Cir. 1996). The Board places a heavy evidentiary burden on the party attempting to show that a historical unit is no longer appropriate and "compelling circumstances are required to overcome the significance of bargaining history." *Ready Mix USA, Inc.*, 340 NLRB 946, 947 (2003) (quoting *Mayfield Holiday Inn*, 335 NLRB 38, 39 (2001)). The Board has determined that even a 1-year bargaining history on a multisite basis can be sufficient to bar a petition seeking an election in a segment of that unit. *Met Electrical Testing Co., Inc.*, 331 NLRB 872, 872 (2000) (citing *Arrow Uniform Rental,* 300 NLRB 246 (1990); *West Lawrence Care Center, Inc.*, 305 NLRB 212, 216-217 (1991)).

IV. APPLICATION OF BOARD LAW TO THE INSTANT CASE

The record fails to show any operational changes or other changes to employees' terms and conditions of employment that would compel finding the historical unit inappropriate. Rather, it shows employees in the historical unit have worked under the same or similar circumstances for the past 10 years. The Petitioner asserts that the fact that there are two separate seniority lists, a separate chain of supervision, and little interchange between the Northern Illinois and Greater Illinois employees compels disturbing the historical unit in this case. The record fails to establish that the seniority lists on the Intervenor's website are used for any purpose other than vacation as indicated in the current collective bargaining agreement. Moreover, this geographic division as cited in the vacation provision of the current collective-bargaining agreement has long been recognized by the workforce, as evidenced by the low level of interchange between Northern Illinois and Greater Illinois and the Intervenor maintaining steward positions representing members only in Greater Illinois. Further, while Paragon may have subcontracted some of its work to Praetorian, there is no evidence Praetorian's employees perform different work or operate under different terms and conditions than unit employees of Paragon. As the Board noted in *Ready Mix*, above, changes to administrative structure and managerial hierarchy, along with "somewhat different benefits" between groups of employees, "do little to disrupt the employees' community of interest in their historical bargaining unit." Id. at 947.

Accordingly, applying extant and well-settled Board precedent, I find the historical unit is appropriate and, therefore, should not be disturbed.

V. CONCLUSION

Based upon the entire record in this matter, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Joint Employers are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.[10]

3. The Intervenor and Petitioner are labor organizations within the meaning of Section 2(5) of the Act and claim to represent certain employees of the Joint Employers.[11]

4. A question affecting commerce exists concerning the representation of certain employees of the Joint Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. There are no contract bars or any further bars in existence that would preclude the Region from processing the petition.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time protective security officers performing guard duties as defined by 9(b)(3) of the Act, working for Paragon Systems, Inc. and Praetorian Shield Inc. (as joint employers) in its contract with the Federal Protective Service, in federal buildings and facilities across Illinois, but excluding all administrative, office clerical employees, managers and supervisors as defined in the Act, and all other employees.

[10] As stipulated by the parties:

> Paragon Systems, Inc., is an Alabama corporation with its principal office in Herndon, Virginia. It is engaged in the business of providing security services to agencies of the Unites States government at facilities located throughout the state of Illinois. During the past 12 months, a representative period, the Employer has performed services in excess of $50,000 in states outside the state of Illinois.
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> Praetorian Shield, Inc., is a Delaware corporation with its principal office in Wilmington, Delaware. It is engaged in the business of providing security services to agencies of the Unites States government at facilities located throughout the state of Illinois. During the past 12 months, a representative period, the Employer has performed services in excess of $50,000 in states outside the state of Illinois.

[11] As stipulated, both the Intervenor and Petitioner do not admit to membership, nor are they affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

DIRECTION OF ELECTION[12]

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Federal Contract Guards of America (FCGOA), Committee for Fair and Equal Representation**, or neither labor organization.

1. Election Details

The parties stipulated that a mail ballot election is appropriate.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit by personnel of the National Labor Relations Board, Region 25, on **October 27, 2020** at 11:00 am ET. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote by mail and do not receive a ballot in the mail by **November 3, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 25 Office at (317) 226-7381 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be commingled and counted vial electronic means on **November 20, 2020** at 11:00 am CT. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots.

2. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **October 8, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well

[12] When the Regional Director of the Board issues a decision and direction of election in a unit larger than that requested by the petitioner, and the petitioner or an intervenor has indicated its willingness to participate in such an election, further processing of the petition is conditioned on the petitioner or an intervenor having an adequate showing of interest in the enlarged unit. If the petitioner or an intervenor does not have a sufficient showing of interest, the direction of election is conditioned on the petitioner or intervenor making an adequate showing of interest in the unit as directed. The petitioner or an intervenor may be given a reasonable period of time to secure the additional showing of interest, normally 2 business days after the issuance of the Decision and Direct6ion of Election, or such further time as the Regional Director may allow based on sufficient justification. See NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11031.1

as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are 1) employees who have quit or been discharged for cause since the designated payroll period; 2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and 3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

3. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **October 16, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

4. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.' If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and, therefore, the issue under review remains unresolved, all ballots will be impounded.

Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: October 14, 2020

Patricia K. Nachand, Regional Director
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